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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION**

**SMITH & NEPHEW, INC. and JOHN O.  
HAYHURST, M.D.,**

**Plaintiffs,**

**v.**

**ARTHREX, INC.,**

**Defendant.**

**Civil No. 3:04-cv-00029-MO**

**SMITH & NEPHEW'S  
RESPONSE TO ARTHREX'S  
NOTICE OF SUPPLEMENTAL  
AUTHORITY**

**PATENT CASE**

Plaintiffs (collectively Smith & Nephew), hereby respond to the Notice of Supplemental Authority filed by Arthrex. (Dkt. No. 1108.)

Unlike the jury in the *Commil* case cited by Arthrex, the jury in this case was charged under the “willful blindness” standard of *Global-Tech* with a form of jury instruction that was proposed by Arthrex, and the jury specifically found that Arthrex was willfully blind as to its infringement. (Dkt. No. 936.) Moreover, the Federal Circuit found that there was substantial evidence to support the jury’s finding of willful blindness under *Global-Tech. Smith & Nephew, Inc. v. Arthrex, Inc.*, 502 Fed.Appx. 945, 950 (Fed. Cir. 2013):

After weighing that evidence against Arthrex employees’ testimony, the jury resolved the factual issue of knowledge against Arthrex, concluding that Arthrex had the necessary knowledge for both induced and contributory infringement. We see no reason to disturb that finding by the jury.

Accordingly, the *Commil* case cited by Arthrex has no relevance to this case.

DATED: July 26, 2013

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